

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.578 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

BHAGWATPRASAD CHANDULAL DAVE
VERSUS
GUJARAT AGRICULTURAL UNIVERSITY & ORS.

Appearance:

MR MB PARIKH for the Petitioner
MR JR NANAVATI for Respondent No.1
None present for Respondents No.3 & 4

Coram: S.K. Keshote,J
Date of decision:3.3.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, an Office Superintendent (O.S.), in the office of the Gujarat Agricultural University, filed this petition before this Court and prayer has been made for quashing of the orders dated 9th July 1981, annexure 'I', order dated 3rd June 1982, annexure 'L', and the order dated 28th June 1982, annexure 'N'.

3. The grievance of the petitioner is that though he is senior to respondent No.4, he was not given benefit of stepping up of his pay to bring it at par with the pay of respondent No.4. Briefly, the facts of the case are that the petitioner entered the services of University on the post of Junior Clerk on 8th May 1956. He was promoted to the post of Senior Clerk on 28th June 1960. The next promotion of the petitioner came on the post of Head Clerk on 20th April 1967. Further promotion of the petitioner was made on the post of office Superintendent on 1st June 1975. The respondent No.4 has also entered in the service of the University on the post of Junior Clerk on 8th September 1962. He was promoted to the post of Senior Clerk on 21st June 1972. On 9th August 1973, the respondent No.4 was promoted on the post of O.S. These facts are not in dispute.

4. The learned counsel for the petitioner contended that the petitioner, though senior to respondent No.4, was given promotion on the post of O.S. after about two years of promotion of respondent No.4 which has resulted in loss of pay. It is further contended that because of inaction or omission on the part of respondent University not to give promotion to the petitioner at the relevant time, it resulted in loss to the petitioner and that loss has to be compensated by stepping up of his pay and bringing it at par with respondent No.4.

5. On the other hand, the learned counsel for the respondent-University contended that the petitioner has no right to get stepping up of his pay to bring it at par with pay of respondent No.4 on the post of O.S. It has further been contended that it is not case of stepping up of pay, but in sum and substance, the petitioner is challenging the promotion of respondent No.4 on the post of O.S. which has been made on 9.8.73. This challenge though indirect, but after ten years thereof suffers from the vice of delay and laches.

6. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

7. The learned counsel for the respondent-University

does not dispute that the petitioner is senior to respondent No.4 in the category of Junior Clerk and Senior Clerk. The learned counsel for the respondent-University also does not dispute that the respondent No.4 was temporarily promoted, as stop gap arrangement, on the post of O.S. on 9.8.73. It is not the case of respondent-University that the temporary promotion of respondent No.4, may be by way of stop gap arrangement, has been made after considering the case of petitioner. The learned counsel for respondent-University further admitted that respondent No.4 is still continuing on the post of O.S. on temporary basis and no regular promotion has been made. From the reply filed by the University, it transpires that the claim of the petitioner for stepping up of salary to bring it at par with the salary of respondent No.4 was denied on the ground that the Resolution dated 15th March 1976 provides that in case only the promotion has been made as stop gap arrangement, stepping up of salary could not be given. Though it is true that the petitioner has not challenged the promotion of respondent No.4 on the post of O.S., which was made on 9.8.73, but it is equally true that the said promotion was only an adhoc, urgent temporary and a stop gap arrangement. It is a settled law that temporary promotion does not give any right to the promotee to hold the post. Reference in this respect may have to the decision of the Hon'ble Supreme Court in the case of State of Orissa v. Dr. Prari Mohan Misra, reported in JT 1995(2) SC 54. Further reference may also have to the decision of Hon'ble Supreme Court in the case of M.P.V.H.S.N. v. Devendrakumar, reported in JT 1995(1) SC 198. Though this was the case of temporary appointment and not temporary promotion, but the principle laid down therein by the Hon'ble Supreme Court equally applies to the case of temporary promotion also. The Hon'ble Supreme Court, in the said case held that a temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared a permanent servant. The respondent No.4 has not acquired any right on the post of O.S. as he still continues as adhoc, temporary promotee. In view of this fact, the action of the petitioner of not challenging the promotion of respondent No.4 is not that much serious where the present petition should be dismissed. The petitioner was appointed in the services of University earlier to respondent No.4 on the post of Junior Clerk and he had been promoted 12 years earlier to respondent No.4 on the post of Senior Clerk. The next promotion was given to the petitioner on the post of Head Clerk on 20.4.67 and the respondent No.4 was not promoted, but respondent No.4

was straightaway promoted to the post of O.S. from the post of Senior Clerk on 9.8.73. The learned counsel for the respondent-University has failed to produce before the Court any regulation or rule or any provision from the Statute of the University or University Act or any Resolution of the University which provides direct promotion to the post of O.S. from the post of Senior Clerk. The learned counsel for the respondent-University fairly conceded that it was only a stop gap arrangement. If it is so, then how it can heavily come upon the petitioner and that too, to the extent where this writ petition should be dismissed on the ground of delay and laches. This Court cannot be oblivious of the fact that immediately after promotion, the petitioner started to make his claim for stepping up of his pay to bring the same at par with the pay of his junior, the respondent No.4 herein. It is not the case of respondent-University that promotion of the petitioner on the post of O.S. was a stop gap arrangement or a temporary promotion. Looking to the facts of this case, the petitioner would have been given promotion on a substantive basis. Though the claim of the petitioner for stepping up may not be justified, but at the same time, it is a case where a junior has been promoted earlier to the petitioner. The Resolution of the University dated 15th March 1976 may not be unconstitutional, but the promotion of respondent No.4 on the post of O.S. on temporary basis by way of stop gap arrangement made on 9.8.73 was illegal, arbitrary as well as void ab-initio as it has been made in violation of provisions of Article 14 & 16 of Constitution of India. Even in the matter of temporary promotion, the respondent-University has to comply with provisions of Article 14 and 16 of Constitution. A junior person could have been promoted where on consideration of claim of senior, he was not found meritorious or suitable for promotion. It is not the case of respondent-University that on 9.8.73, the petitioner was not eligible for promotion to the post of O.S. As stated earlier, it is also not case of University that the case of petitioner was also considered for promotion to the post of O.S. alongwith respondent No.4, but he was not found suitable or meritorious in comparison to the case of Respondent No.4. It is a case of stop gap arrangement and in such case, if the University does not want to undertake the exercise of calling the eligible persons for selection, arrangement should have been made in accordance with seniority. If it was made in accordance with seniority then certainly the petitioner had first and preferential claim for the same in comparison to the claim of respondent No.4. The petitioner was working on the post of Head Clerk since 1967 whereas the respondent No.4 was

working on the post of Senior Clerk from 21st June 1972, and as such, looking to his seniority as well as experience, he should have been preferred in promotion, though on temporary and stop gap arrangement. Moreover, the respondent No.4 was never promoted to the post of Head Clerk and as such, he had no experience of the post of Head Clerk which is immediately the post below the post of O.S. The temporary promotion of respondent No.4 within a short spell of his promotion to the post of Senior Clerk, on the post of O.S. seems to be a case of favouritism and nepotism. In absence of any reasons, good, bad or different, to justify the promotion of respondent No.4 on the post of O.S., superseding the petitioner altogether ignoring the claim of the petitioner, the only inference follows therefrom is that it is out come of favouritism or nepotism. The petitioner has not raised any plea of malafides, but from the facts which have come on record, the only inference which can be drawn is that the respondent No.4 has been favoured. It may not be a case of personal malafides, but nevertheless, it was a case of official malafides in the action of respondent-University. The claim of stepping up the pay of petitioner may not be justified at this stage, but at the same time, this Court will not allow the petitioner to suffer loss of pay only on the ground that is not justified to challenge the order dated 9th August 1973 under which the respondent No.4 has been given promotion on the post of O.S. The respondent No.4, a junior person, started to get higher pay under the order of University which is void ab-initio. In the absence of challenge to said order, this Court will not oust the respondent No.4 from the office of O.S., but at the same time this Court will not permit the respondent No.4 to claim any benefit of seniority over the petitioner on the post of O.S.

8. It is only a case of giving of benefits of promotion to the petitioner from 9th August 1973, the day on which his junior was promoted on urgent temporary basis. In the circumstances, interest of justice will be met in case the Special Civil Application is disposed of with directions to respondent-University to consider the case of petitioner for promotion on the post of O.S. with effect from the date on which his junior, respondent No.4, was given promotion and in case on consideration of his case, he is found suitable for promotion, then he should be given consequential benefits, i.e. of deemed promotion from the date on which the respondent No.4 has joined the office of O.S. However, the petitioner shall not be entitled for the actual benefits of the post of O.S. for the period from the date of joining of the said

post by respondent No.4 till the date on which the petitioner joined the office of O.S. on promotion, i.e. 1.6.75. However, he shall be entitled for the notional benefits, i.e. his pay should be notionally arrived at on 1.6.75, the date on which he joined the post of O.S., and he shall be entitled for all further consequential benefits. In case the petitioner has retired from the services, his all retirementary benefits including the pension, gratuity etc. may accordingly be revised and the amount may be paid to him. The respondent-University is further directed to undertake the aforesaid exercise within three months from the date of receipt of certified copy of this order and in case the petitioner is found suitable for promotion from the date on which his junior, respondent No.4 was promoted, then all consequential benefits should be given in accordance with the order of this Court within two months next. The respondent-University is further directed to pay to the petitioner, Rs.2,000/- by way of costs of this Special Civil Application. Rule made absolute in aforesaid terms.

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(sunil)